IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 260 OF 1996.

Raju Shankar Shete,]
age: 27 years, Occupation: Hotel]
Business, resident of Dhalgaon,]
Taluka Kavathe, Mahankal,]
District : Sangli,]
(at present lodged in the Kolhapur]
District Prison, Kalamba, Kolhapur.)] .. Appellant

Versus

The State of Maharashtra.] .. Respondent

Mr.S.H. Ingawale for the appellant.

Mr.D.R. More, A.P.P., for the respondent-State.

CORAM: S.S. PARKAR &
ANOOP V. MOHTA, JJ.

DATED: 8TH SEPTEMBER, 2005

ORAL JUDGMENT. : [Per Anoop V. Mohta, J.]

1. The appellant was charged, tried and has been convicted under Section 302 of the Indian Penal Code (for "IPC") by the judgment and order dated 30th March, 1996, passed by the Sessions Judge, Sangli, in Sessions Case No.29 of 1993. Therefore, this Appeal.

2. The name of the deceased is Alka Bhise ("the

deceased"). The date of incident is 27th November, 1992 at 10.00 a.m. The deceased died on 30th November, 1992 because of 68% burn injuries. The appellant had illicit relations with the deceased. After marriage, the appellant refused to maintain the deceased. She, therefore, started visiting the house of the accused and lastly on 26th November, 1992, insisted for her maintenance, as appellant used to provide her money and grains before his marriage. The appellant refused the same. During the quarrel, as she had also threatened, as per prosecution, the appellant poured kerosene on the body of the deceased. The deceased Alka, however, ran away due to fear and went to her house. On 27th November, 1992, at about 10.00 a.m., the appellant visited the house of the deceased and immediately during the quarrel, accused again poured kerosene on her body from the bottle, which was lying in her house and set her on fire. The deceased Alka shouted. PW4 Vidya Bhosale, Shalan Chavan, after hearing the shouts reached there. The accused, however, ran away. Nobody from the locality helped the deceased. The deceased, therefore, on her own in an injured condition, walked to the Primary Health Centre (PHC), Dhalgaon for treatment.

3. On 27th November, 1992, at about 13.30 p.m., she reached the room of Dr.More (PW6), Medical Officer,

PHC, Dhalgaon. After treatment, she regained her consciousness. Dr.More asked a health Officer, his assistant Naik (PW11) to record the case history in his presence, the same was recorded at Exhibit-19. Dr.More took entry of medico-legal case bearing No.169/1992 dated 27th November, 1992, at 10.30 p.m. Exhibit-23 & 24. After intimation on phone, the Head Constable Korabu made a entry No.18 in the Station Diary from Kawathe Mahankal Police Station and further informed PSI Shinde (PW12). PSI Shinde reached to the PHC Dhalgaon at 5.00 p.m. On request through a letter Exhibit-20A by PSI Shinde Dr.More gave a certificate about the deceased's mental condition to give a statement. Accordingly, the statement was recorded by PSI Shinde (PW12), Exhibit-20, in the presence of Dr. More and obtained his endorsement on it. The deceased was fully conscious.

4. On 27th November, 1992, at about 6.00 p.m., Dr.More sent the deceased to the Civil Hospital, Sangli, along with his forwarding letter Exhibit-22. PSI Shinde registered Crime No.167/92 of Kawathe, Mahankal, on the basis of the dying declaration of the deceased (Exhibit-20) at Exhibit-21. The deceased was taken to the Civil Hospital, Sangli by PC Chavan of Kawathe Mahankal Police Station and was admitted on 27th

November, 1992 at about 21.40 hours. Dr.Bali (PW13) examined the deceased at about 22.00 hours and recorded 72% burns on her body and prepared the case papers at Exhibit-50.

5. PW9 Head Constable Tukaram Ninappa Paithane, on 27th November, 1992, at about 22.00 hours requested by a letter (Exhibit-26) to the Special Executive Magistrate (SEM) Mr.Jadhav (PW7), to record a dying declaration. Dr.Mali (PW13), had informed about the consciousness of the deceased and her fit state of mind to give the statement. The SEM at 22.45 hours, after disclosing his identity to the deceased, informed his purpose of the visit. He had put requisite questions to the deceased to which she replied and the SEM recorded accordingly (Exhibit-27) in presence of Dr.Mali. After completion of the declaration, the contents were read over to the deceased. She admitted the contents to be true, correct and as per her version. The SEM took her thumb impression on the statement (Exhibit-27) and also obtained the endorsement of Dr.Mali on it. The SEM gave the sealed envelope in the name of the Judicial Magistrate, First Class Kawathe-Mahankal and also supplied the copy of the statement to the Head Constable Paithane (PW9). The written report accordingly, was submitted by Paithane (PW9), to the Market Yard Police

Station.

6. On 28th November, 1992, at about 2.00 p.m., PSI Shinde arrested the accused Raju Shankar Shete. On 28th November, 1992, at about 10.30 a.m., PSI Shinde (PW12) visited the place of incident alongwith the two Panchas viz. Shivaji Sutar (PW1) and Suresh Shingade. One Anjana Bhosale, a witness, pointed out the spot of incident. PSI Shinde drew Spot Panchanama and seized burnt matchstick, matchbox, glass bottle, burnt pieces of clothes. The deceased died on 30th November, 1992 at about 5.15 p.m. at the Civil Hospital, Sangli. On 1st December, 1992, Head Constable Paithane drew the Inquest Panchanama of the dead body (Exhibit-7). Dr.Bhave (PW10) and Dr.Mrs. Narkar examined the dead body and submitted the Post Mortem Report on 1st December, 1992 (Exhibit-33). The probable cause of the death of the deceased was shock due to 68% burns.

7. On 3rd December, 1992, PSI Shinde, after receipt of the documents like Inquest Panchanama, Post Mortem Report and dying declaration, registered the offence under Section 302 IPC. After completion of the investigation, the accused was chargesheeted. By an order dated 18th January, 1993, the Judicial Magistrate, First Class, committed the case to the Sessions Court,

Sangli. The defence of the accused was of total denial and false implication, apart from defence of immoral character of the deceased.

8. The prosecution has, in all, examined 13 witnesses. The appellant did not examine any witness. The prosecution witnesses are PW1-Shivaji Madhu Sutar, a neighbour of the deceased and panch witness to the Spot Panchanama; PW2-Rajakka Anna Bhosale, a neighbour, declared hostile; PW3 Mubarak Kondaji Mujawar, a waiter in the hotel of the accused, declared hostile; PW4-Vidya Ashok Bhosale, a declared hostile neighbour; PW5-Appa Gunda Bhise, the father of the deceased; PW6 -Dr.Ananda Nana More, a Medical Officer of the Primary Health Centre, Dhalgaon, who examined and treated the deceased and recorded the first dying declaration; PW7 -Ramchandra Dattatraya Jadhav, Special Executive Magistrate (SEM) who also recorded the statement of the deceased; PW8 Nirmala Namdeo Bhosale, a child neighbour was also declared hostile; PW9-Tukaram Ninappa Paithane, Head Constable; PW10-Dr.Sanjay Sudhir Bhave, a Medical officer who performed the autopsy on the dead body of the deceased; PW11-Achyut Arvind Naik, a Health Assistant, PHC, Belankhi, who noted down the first dying declaration of the deceased Alka; PW12-PSI Vithal Ambadas Shinde, the Investigating Officer. PW13-Dr.Anil

Dhondiram Mali, a Medical Officer who examined and treated the deceased at the Civil Hospital, Sangli.

9. The learned Sessions Judge, after considering the material placed on the record, including the dying declarations (Exhibits 19, 21 and 27) all dated 27th November, 1992, at different times recorded by the different persons, and the evidence of the hostile witnesses referred above, has rightly convicted the appellant.

10. The legal foundation, as declared by the Apex Court's Constitutional Bench in **Laxman Vs. State of Maharashtra** (2002) 6 S.C.C., 710, is as under:

> "Since the accused has no power of cross-examination, the courts insists that the dying declaration should be of such a nature as to inspire full confidence of the court in its truthfulness and correctness. The court, however, has always to be on guard to see that the statement of the deceased was not as a result of either tutoring or prompting or a produce of imagination. The court also must further decide that the deceased was in a fit state of mind and had the opportunity to observe and identify the assailant. Normally, therefore, the court in order to satisfy whether the deceased was in a fit mental condition to make the dying declaration looks up to the medical opinion. But where the eye-witnesses state that the deceased was in a fit and conscious state to make the declaration, the medical opinion will not prevail, nor can it be said that since there is no certification of the doctor as to the

> fitness of the mind of the declarant, the dying declaration is not acceptable. A dying declaration can be oral or in writing and any adequate mind of communication whether by words or by signs or otherwise will suffice provided the indication is positive and definite. In most cases, however, such statements are made orally before death ensues and is reduced to writing by someone like a Magistrate or a doctor or a police officer. When it is recorded, no oath is necessary nor is the presence of a Magistrate absolutely necessary, although to assure authenticity it is usual to call a Magistrate, if available for recording the statement of a man about to die. There is no requirement of law that a dying declaration must necessarily be made to a Magistrate and when such statement is recorded by a Magistrate there is no specified statutory form for such recording. Consequently, whet evidential value or weight has to be attached to such statement necessarily depends on the facts and circumstances of each particular case. What is essentially required is that the person who records a dying declaration must be satisfied that the deceased was in a fit state of mind. Where it is proved by the testimony of the Magistrate that the declarant was fit to make the statement even without examination by the doctor the declaration can be acted upon provided the court ultimately holds the same to be voluntary and truthful. A certification by the doctor is essentially a rule of caution and therefore the voluntary and truthful nature of the declaration can be established otherwise."

11. The Apex Court in **Muthu Kutty & Anr. Vs. State by Inspector of Police, Tamil Nadu** 2005 ALL MR (Cri) 1523 (SC) has further observed as under:

> "(ii) If the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration. (See

State of Uttar Pradesh Vs. Ram Sagar Yadav and others (AIR 1985 SC 416) and Ramavati Devi Vs. State of Bihar (AIR 1983 SC 164).

(iii) The Court has to scrutinize the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had an opportunity to observe and identify the assailants and was in a fit state to make the declaration. (See **K. Ramachandra Reddy and another Vs. The Public Prosecutor (AIR 1976 S.C. 1994)**."

(xi) Where there are more than one statement in the nature of dying declaration, one first in point of time must be preferred. Of course, if the plurality of dying declarations could be held to be trustworthy and reliable, it has to be accepted. (See **Mohanlal Gangaram Gehani Vs. State of Maharashtra (AIR 1982 SC 839).**

12. In view of the above legal backdrop, in the present case, there is consistency in the dying declarations (Exhibits 19, 21 and 22) which have been duly proved by PW6, PW7 and PW13 apart from the material placed on the record by the prosecution through the Police Officers which includes Post Mortem Report, Spot Panchanama, Medical Certificates and surrounding circumstances.

13. Exhibit-19, is the first declaration/statement of the deceased dated 27th November, 1992, which was produced and proved by PW6 Dr.Ananda More, who had treated the deceased and got the case history recorded

through his Assistant A.A. Naik (PW11). Mr. Naik had obtained the thumb impression of the deceased apart from her signature. As per PW6, the deceased was conscious and in a fit state of mind to give statement. PW6 had also endorsed the said statement and corroborated its contents being correct as per the version of the deceased. The basic extract of the said statement, as relevant, is reproduced as under:

> "Today in the morning in my room (In the room of Shri Namdeo Bhosale) he threatened to me and told me to get and set fire. I say that if you want to set fire you yourself do it. Shri Raju Shete poured kerosene on my person and set fire and again by pouring water he ran away from the room. All persons (from the lane) though saw me, none came to my help. I went alone to the Hospital for treatment."

The above statement of the deceased is further found in Exhibit-21 dated 27th November, 1992, and again proved through PW6, as it was recorded as per the version of the deceased which is marked as Exhibit-21. PSI Shinde has further corroborated that the deceased was conscious and the said statement was recorded in his presence. The said statement (Exhibit-21) was further endorsed and signed by PSI Shinde. The fit mental condition of the deceased was also recorded and proved through Exhibit-20 by PW6 and Exhibit-20A by PW12. In Exhibit-21 the deceased had given an elaborated history and the

background that resulted into the incident in question. She was in no way disturbed and/or had not given distorted version of the dying declaration (Exhibit-19) as reproduced above. There is material to justify the prosecution case and as declared by the deceased in her statement that after the incident no neighbour or anyone else helped her. She was lying in the house for a long time from 10.00 a.m. onwards. She got herself hospitalised at the PHC, Dhalgaon, at about 1.00 to 1.30 p.m. This further supports that even in such injured condition i.e. 68% burns, the deceased was fully conscious and was able to reach to the hospital. The deceased had also confessed about her illicit relationship with the appellant since more than two years. She had further stated that after the appellant got married, he stopped maintaining her. There was constant quarrel between the two on that issue. This also means that there was a motive to commit the crime in question in order to get rid of the deceased.

14. The next relevant Exhibit-27, further supports the prosecution case which was duly proved by PW7 SEM Sangli. On the requisition of the Head Constable Paithane (PW9) at about 10.45 p.m., he reached to the Civil Hospital, Sangli, to record the dying declaration in question. After completing all the formalities,

including the verification of the mental state of the patient, as confirmed by Dr. More, the SEM, after recording the statement, also got the thumb impression of the deceased. The SEM had completed all the formalities by disclosing his identity and reason for recording such a statement. The SEM has also stated that the deceased was conscious and was in the fit state of mind to give the statement. This last statement which was recorded at about 11.00 p.m. in the night of 27th November, 1992, by the SEM, also corroborates her original statement (Exhibit-19). The extract is as under:

> "thereon he poured the kerosene oil in the bottle from my room on my person; that time, I was crying then immediately lighted match stick by abusing and set fire to my body. At that time there was tericot saree, hence, it got fired and also my body fired. I feared and shouted. At that time my paramour Raju Shete poured water for extinguish to me and he ran away from the room. Then I myself went by walk to the Government Hospital at Dhalgaon. I am taken treatment there. And then at about 6.00 P.M. Kavathe-Mahankar police sent to Civil Hospital, Sangli, for further treatment."

15. In view of the above background, the Sessions Judge committed no error in convicting the appellant under Section 302 of the IPC, even though the other witnesses and basically the neighbours were declared

hostile. We are also convinced that there is no force in the contentions as raised by the counsel appearing for the appellant on the ground of non mentioning of the time on the first dying declaration and absence of endorsement about the mental condition of the patient. PW6 Dr. More was present when the dying declaration was recorded by PSI Shinde on the same day, wherein there was positive statement and endorsement about the conscious and fit mental condition of the deceased. The endorsement at the top or at the bottom of the statement is immaterial. The evidence of PW6 read with the evidence of PW12 PSI Shinde, remained undisturbed insofar as the contents of the dying declaration made by the deceased. There are no serious infirmities of any kind in the dying declarations in question. The SEM who had recorded the dying declaration at 11.45 p.m., even though not in question-answer form, still, in view of the law laid down by the Apex Court as referred above and in the facts and circumstances of the case, the last dying declaration recorded by the SEM further supports the prosecution case fully. There is no force in the contention raised by the learned counsel appearing for the appellant that the deceased was not conscious and she was unfit to make such statements. On the contrary, there is sufficient material to justify the prosecution case that the deceased was conscious and in the fit

mental condition to make such statements. All the declarations/statements made by the deceased were consistent and clear against the appellant. There is nothing brought on the record to justify the defence case of any influence or probability of tutoring during this period. The deceased died on 30th November, 1992. The declarations, as recorded, remained the same till her death. There is no discrepancy or contradiction in the respective three reliable and trustworthy dying declarations of the deceased (see **Muthu Kutty**) (supra) .

16. The evidence of PW12 read with the evidence of PW9 and PW11 proved beyond reasonable doubt, the genuineness of the prosecution case including the dying declarations in question. The second dying declaration recorded by PSI Shinde was treated as a first information report. The contents of the dying declaration of the deceased, insofar as illicit relations with the appellant are further corroborated and reflected in the evidence of PW5, the father of the deceased.

17. The appellant, in his statement under Section 313 of the Criminal Procedure Code, even though denied the illicit relation with the deceased, was quite sure about her alleged immoral character. No defence witness

was examined.

18. Merely because no other independent witness, including the neighbours supported the case of the prosecution, in the facts and circumstances and in view of the three consistent declarations made by the deceased, we are also convinced that the appellant and no one else had committed the crime. As recorded above, such consistent dying declarations of the deceased are sufficient to convict the accused, even though not supported by any other independent witness. See **Muthu Kutty** (supra).

19. PW6 Dr.More was unable to make out a case of any trace of the water truly on the person of the deceased as reflected in the above dying declarations, but that by itself is no reason to accept the case of the defence that the appellant was not present at the site, at the relevant time. The delay in reaching the hospital which was 2 Kms. away from her house, as she reached the hospital at about 1.30 p.m. as the incident took place at about 10.00 a.m. itself is no reason to disturb the prosecution case. There is uncontradicted material on the record to show that the deceased, in an injured condition reached the hospital on her own by walking. There is no material to support the defence

case that her condition had deteriorated during these five hours as she was without any treatment.

20. For the above reasons and also for the reasons recorded by the learned Sessions Judge, we are also of the view that the prosecution has proved beyond reasonable doubt by clinching and reliable evidence of dying declarations as referred above, that the appellant-accused had the motive and intention and accordingly, by pouring kerosene on the person of the deceased, set her on fire, which resulted into her death. Therefore, the order of conviction under Section 302 as passed by the Sessions Judge is correct and proper and it is within the framework of law, as well as, the record.

21. Taking all the factors into account, the Appeal is dismissed. The judgment and order dated 30th March, 1996, passed in Sessions Case No.26 of 1993 is confirmed. The bail bond stands cancelled. Appeal is accordingly disposed of. Accused shall surrender within four weeks.

[S.S. PARKAR, J.]

[ANOOP V. MOHTA, J.]

[srpasha@hc]